



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

January 29, 2008

CBCA 971-RELO

In the Matter of SHAWN P. CRUMP

Shawn P. Crump, Buckeye, AZ, Claimant.

Linda L. Lane, Accounting Officer, Office of the Chief Financial Officer, Department of Homeland Security, Washington, DC, appearing for Department of Homeland Security.

FENNESSY, Board Judge.

Claimant, Shawn P. Crump (claimant or Mr. Crump) has submitted a request for review of his claim for \$4108.46, for reimbursement of temporary quarters subsistence (TQSE) expenses incurred in connection with a permanent change of station (PCS) from his position with the Department of Homeland Security (DHS or the agency) in El Paso, Texas, to a position with DHS in Phoenix, Arizona. For the reasons set forth below, we find that the agency improperly denied the claim.

Background

_____ On April 16, 2007, the agency notified claimant of a PCS from El Paso to Phoenix. With that notification, the agency also provided claimant with a relocation transfer questionnaire to complete. The form inquired, among other things, whether Mr. Crump would require a house hunting trip and temporary quarters in connection with the PCS.

Mr. Crump completed the questionnaire, stating that he would require a house hunting trip and temporary quarters at his new duty station. Mr. Crump also stated that he would be selling a home at the old duty station and purchasing a home at his new duty station.

On May 15, 2007, the agency issued the authorization for the PCS. Among the reimbursements authorized were a house hunting trip, TQSE for thirty days, and real estate expenses for the sale of claimant's home at his old duty station and the purchase of a home at the new duty station. In an accompanying memorandum the agency identified Mr. Crump's PCS coordinator and referred Mr. Crump to DHS's PCS Manual.

Mr. Crump's review of the Manual raised certain questions. By e-mail message dated May 21, he inquired of his PCS coordinator whether there were any restrictions concerning temporary quarters expenses such as leasing an apartment or house while his new, permanent residence was built. The agency's PCS coordinator responded by e-mail on May 22, stating that there are no restrictions concerning TQSE provided the quarters are considered temporary and not a permanent residence.

That same day Mr. Crump also asked whether his reimbursement would be affected if he were to sign a lease for temporary quarters while his home was being built. The PCS coordinator advised Mr. Crump that there would be no problem if his intent was to sign a lease for temporary quarters.

On June 23, 2007, Mr. Crump executed a purchase agreement for the construction of a particular model home by Pulte Home Corporation on a specific lot at a specific address in Buckeye, Arizona. The agreement was also executed by the seller's agent and stated that it was a binding agreement. The home was to be delivered not later than two years after the date of the agreement, but the anticipated delivery date was January 15, 2008. Mr. Crump furnished to the builder \$1000 in earnest money.

On June 24, 2007, claimant entered into a rental agreement for the lease of a residence at the new duty station commencing on July 7. The homeowners' association for the community in which the rental property was located required that, if a house were leased, it must be for a period of twelve months. Therefore, the period of the lease was one year, but, by the terms of an addendum, it converted to a month-to-month lease on January 1, 2008. DHS has stated that the rental property was a four-bedroom, three-bath home with a swimming pool and was listed for sale at \$565,335. The home was to remain on the market during Mr. Crump's tenancy.

On June 29, 2007, Mr. Crump notified his PCS coordinator by e-mail of his temporary quarters address, stated that he had signed a six-month lease with month-to-month option thereafter, and that his permanent residence was expected to be completed by January 15, 2008.

On July 5 and 6, 2007, claimant occupied temporary quarters at his old duty station. On July 7, claimant traveled to the new duty station, obtained the keys to the rental property, turned on the utilities, and accepted delivery of his household goods at the rental property.

On July 30, Mr. Crump notified his PCS coordinator that the thirty days of authorized TQSE was about to expire and that he would not request an extension because he recognized that his decision to build a residence did not justify extending the temporary quarters expense allowance, according to the agency's PCS Manual.

Mr. Crump submitted a temporary quarters and miscellaneous expense voucher dated August 9, 2007. He requested reimbursement of \$4322.63 for lodging for two nights at the old duty station, plus lodging for twenty-eight days at the new duty station, four restaurant meals, groceries, utility connection fees, and a cleaning fee. Mr. Crump did not furnish with the voucher his purchase agreement for the house to be built.

On September 21, Mr. Crump inquired of the status of his voucher. On October 4, the PCS coordinator notified Mr. Crump that he may not be entitled to reimbursement of TQSE because he entered into a long-term lease and had his household goods delivered to the leased premises. The PCS coordinator stated that he had forwarded the issue to management for a determination.

During a telephone conversation on October 5, 2007, Mr. Crump again explained his decision to lease a house until his permanent residence was completed. He also offered to submit additional information and documentation if requested. On October 9, without requesting any additional information from Mr. Crump, the agency determined that the length of the lease, the receipt of household goods, and the commencement of utility services reflected Mr. Crump's intent to make the leased house his permanent residence.

On November 15, 2007, Mr. Crump requested the Board to review his claim for TQSE. Attached to Mr. Crump's request were numerous exhibits, including the e-mail communications with his PCS coordinator and the agency decision-maker, the notice of PCS, the travel authorization, the purchase agreement for the house to be built, a copy of the check for \$1000 earnest money, and the rental agreement with addendum for the leased property.

In its response, the agency stated that Mr. Crump's rental property was, in fact, his permanent quarters because it was a single family house subject to a one-year lease where Mr. Crump received his household goods. It found the purchase agreement for the new house was vague and not sufficient to establish Mr. Crump's intent that the leased property was for temporary occupancy.

In his reply to the agency's response, Mr. Crump refuted the agency's position, observing that he terminated the lease on January 8, 2008. Included with his reply were a copy of his loan application for the new house dated July 2, 2007, a copy of his finance agreement dated December 18, 2007, a copy of the cashier's check for the down payment dated December 20, 2007, a copy of the final settlement statement dated December 31, 2007, and a document reflecting that a final walk-through of the rental property was performed on January 8, 2008.

Discussion

By statute, when the Government transfers an employee from one permanent duty station to another in the interest of the Government, the agency has the authority to pay the subsistence expenses the employee incurs while occupying temporary quarters, provided certain requirements are met. 5 U.S.C. § 5724a(c) (2000). The Federal Travel Regulation (FTR) implements the statute. The DHS PCS Manual supplements the FTR.

The DHS PCS Manual provides that DHS employees will be reimbursed for TQSE pursuant to the actual expense method.¹ Under the actual expense method of reimbursement, employees are reimbursed their actual expenses for TQSE in thirty-day increments or less, not to exceed sixty consecutive days. 41 CFR 302-6.104 (2006). The employee's eligibility to receive the allowance ends when he or she occupies permanent quarters. *Id.* 302-6.305.

The FTR defines "temporary quarters" as lodging obtained for the purpose of temporary occupancy from a private or commercial source. 41 CFR 302-6.1. Both the FTR and the PCS Manual recognize that the purpose of a TQSE allowance is to reimburse an employee reasonably and equitably for subsistence expenses incurred when it is necessary for the relocating employee to occupy temporary lodging while arranging for permanent quarters at the new duty station. 41 CFR 302-6.1, -6.3. *See Donald D. Fithian, Jr.*, GSBCA 16712-RELO, 06-1 BCA ¶ 33,204; *David S. Reinhold*, GSBCA 16334-RELO, 04-1 BCA ¶ 32,576. The temporary quarters allowance is intended to ease the transition from one duty station to another. *Stephen A. Monks*, GSBCA 15029-RELO, 00-1 BCA ¶ 30,650.

The FTR explains that the agency is to administer the TQSE allowance to ensure it is used only for so long as necessary until the employee can move into permanent quarters. 41 CFR 302-6.300. Both the FTR and the DHS PCS Manual provide that if an employee's temporary quarters become his permanent quarters, he will receive a TQSE allowance only

¹ An agency may alternatively authorize an employee to be reimbursed pursuant to the "fixed amount" method. Employees reimbursed according to this method receive a lump sum payment. 41 CFR 302-6.200, -6.201.

if the employee can show in a manner satisfactory to the agency that he initially intended to occupy the quarters temporarily. *Id.* 302-6.14; *Janet L. Hughes*, GSBCA 13731-RELO, 97-1 BCA ¶ 28,691. The FTR requires the agency, when making a determination of whether quarters are temporary, to

consider factors such as the duration of the lease, movement of the household effects into the quarters, the employee's expression of intent, attempts to secure a permanent dwelling, and the length of time the employee occupies the dwelling.

41 CFR 302-6.305. A determination of whether quarters are temporary is not susceptible of any precise definition. It must be based on the facts and circumstances of each case. It should revolve primarily around the employee's intention at the time he leased the quarters. *Stephen A. Monks*, GSBCA 15029-RELO, 00-1 BCA ¶ 30,650. *see also Brenda Byles*, GSBCA 14592-RELO, 99-1 BCA ¶ 30,156; *Kim R. Klotz*, GSBCA 13648-RELO, 97-1 BCA ¶ 28,789.

Had Mr. Crump submitted the purchase agreement for the house to be built with his TQSE travel voucher, his claim would have been better documented. However, even after receiving the purchase agreement, the agency maintains that Mr. Crump failed to satisfactorily demonstrate his intention to occupy the rental property temporarily. It contends that the purchase agreement is vague and does not reflect a firm contract to purchase a new house.

The agency either misread or misunderstood the purchase agreement. It was plainly a binding agreement similar to other such agreements for the purchase of a home to be constructed. Mr. Crump's only opportunity to terminate the agreement was in the event he did not receive an unconditional loan approval, or the seller was unable to begin construction within 120 days of the execution of the purchase agreement due to unforeseen conditions, or the seller defaulted on any other obligations and failed to cure the default within ten days. The seller could terminate the agreement only if it did not receive necessary governmental approvals and permits within 180 days of signing the agreement, or the buyer defaulted on its obligations as specified in the agreement, or the home was damaged or destroyed by casualty before closing of the sale.

Further, the purchase agreement set forth the particular address, lot number, and model of the home that the seller was to build in accordance with its specifications. Although Mr. Crump did not initially include the purchase price for the house with his

submissions, perhaps in a desire to keep his finances personal, the purchase agreement was plainly a binding agreement by Mr. Crump to purchase a specific house at a specified location within a specified time period.² The execution of this purchase agreement before renting the temporary quarters is compelling evidence that Mr. Crump intended the rental quarters to be temporary. It is also consistent with all of the information concerning his housing plans that Mr. Crump furnished to his PCS coordinator prior to relocating and submitting his voucher.

This claim is unlike the situation in *Keith E. Kuyper*, GSBCA 15839-RELO, 02-2 BCA ¶ 31,983, where the employee signed a three-year lease and moved his family and household goods into rental property, stating that he hoped to be able to buy a house when his financial circumstances permitted. There, the GSBCA, one of our predecessor boards of contract appeals, determined that the claimant's expression of hope was simply too vague to provide proof that the rental quarters were temporary in light of the other circumstances.

The agency also denied TQSE reimbursement to Mr. Crump on the theory that the rental quarters were necessarily permanent because they were suitable to accommodate his family and household goods. That was not a rational conclusion. While an employee's rental of inadequate quarters has been cited as evidence that the quarters were temporary, *see Charles A. Gardner*, GSBCA 16089-RELO, 04-1 BCA ¶ 32,446; *Steven F. Bushey*, GSBCA 15289-RELO, 01-1 BCA ¶ 31,291, we know of no requirement that an employee must rent inadequate lodgings in order to be eligible for TQSE reimbursement.

The agency also contends that, because Mr. Crump's decision to build a house was a personal decision, he somehow forfeited his authorized reimbursement for thirty days of TQSE. This contention is also without merit. The applicable regulations clearly contemplate that an employee is eligible to be reimbursed for temporary quarters even if he decides to have a house built. The FTR states that an example of a compelling reason to extend authorization for TQSE is because an employee cannot occupy a new permanent residence because of short-term delay in construction of the residence. 41 CFR 302-6.105(b); *Steven F. Bushey*.

² In his final submission to the Board, Mr. Crump did include documentation reflecting the purchase price of the home.

Decision

The agency erroneously applied the regulations. The claim is granted. Mr. Crump is entitled to reimbursement for thirty days of authorized TQSE.

EILEEN P. FENNESSY
Board Judge